



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 26, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0774

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 3	5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee may have engaged in unprofessional conduct and abused his discretion when he stopped and then arrested the Complainant for jaywalking. The Complainant further alleged that the Named Employee engaged in dishonesty.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA determined that a Sergeant may have failed to properly exercise his supervisory responsibilities. This matter was returned to the chain of command to be handled as a Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA concerning his detention and then arrest for “jaywalking” by Named Employee #1 (NE#1).

The Complainant told OPA that he was about to cross the street, admittedly against the light, when he saw NE#1 driving a patrol vehicle with its emergency lights on. It looked to the Complainant that NE#1 was on his way to a call. However, NE#1 then used a “horn” that sounded to him like an ambulance and pulled up in front of him. NE#1 asked for his identification and the Complainant did not think he needed to provide his name. NE#1 told him to put his hands behind his back and arrested him. The Complainant said that NE#1 was not “physically abusive or aggressive,” but that he had a negative attitude and demeanor towards the Complainant. The Complainant said that he felt that NE#1 treated him like he was a criminal and was unprofessional towards him. The Complainant opined that NE#1 may have treated him poorly because of the way he looks. He felt that it was a waste of resources to stop him for



jaywalking when NE#1 was apparently going to another likely more important call. The Complainant was also concerned about NE#1's inaccuracies concerning this incident, specifically when he said that the Complainant "jumped" in front of his patrol vehicle. The Complainant said that this was incorrect. The Complainant said that he wanted NE#1 to get a talking to about this incident and was not necessarily seeking that he be suspended.

As part of its investigation, OPA reviewed the In-Car Video (ICV) and Body Worn Video (BWV) recorded by NE#1. The ICV showed NE#1's patrol vehicle approach an intersection. The Complainant could be seen rushing across the street against the light from right to left. NE#1 was driving in the left lane as he proceeded towards the intersection. At that time, the Complainant was standing still in the street just off of the curb looking directly at the approaching patrol vehicle.

NE#1's BWV indicated that he exited the patrol vehicle and walked towards the Complainant. He stated to him: "Go get against that wall. What are you doing?" NE#1 took hold of the Complainant's arm and directed him towards the wall of a nearby building, saying: "Go stand against that wall." NE#1 went over the radio and logged himself to the call, saying: "Out with a male who jumped in front of my vehicle..." NE#1 asked the Complainant for his name. the Complainant asked if he was being arrested. NE#1 said that he was being detained for pedestrian interference. NE#1 told the Complainant to take his hands out of his pockets and again asked for his name. the Complainant replied: "I don't feel like I need to give you that right now." NE#1 said that "maybe" the Complainant did not have to, but that he would take the Complainant to the jail to fingerprint him. The Complainant began to take his gloves off. He remarked to NE#1: "Hey, if you guys are finally starting to do a job..." NE#1 told the Complainant to "take a seat." The Complainant said "no, sir." NE#1 again told the Complainant to "sit down" and said: "We're not playing this game." The Complainant replied "no, sir," and told NE#1: "You can take me to jail right now." As he did so, he turned around and placed his hands behind his back. NE#1 said "alright" and began to take the Complainant's backpack off. NE#1 handcuffed the Complainant and told him that he was being arrested for pedestrian interference.

NE#1 read the Complainant Miranda warnings and searched him in front of his patrol vehicle. NE#1 asked the Complainant if had a "reason for doing this." He referenced the Complainant "jumping in front" of his vehicle. The Complainant referenced NE#1 having a left turn signal on at the time. NE#1 replied: "However, you can't cross when it says no crossing." The Complainant asked if it was jaywalking and NE#1 responded that the crime was "pedestrian interference." The Complainant told NE#1 that, when he "laid on the horn," the Complainant stopped. After the Complainant was seated in the rear of the patrol vehicle, NE#1 explained what happened to another officer. He said: "He was like waiting on the sidewalk and I was coming. And right before I got here, he was standing in the street and smiling and stopped right here...It's so weird." The Complainant was transported to the West Precinct. NE#1 ultimately charged the Complainant by officer and released the Complainant from the precinct.

OPA also interviewed NE#1 and his Sergeant.

NE#1 said that, while driving down a city street, he observed the Complainant at an intersection. NE#1 said that he moved into the left lane as he intended to take a left on First Avenue (the intersection was at Third Avenue). He recalled that the Complainant looked at him and then chose to run across the street against the light. The Complainant then stopped right in the street before the crosswalk and in the path of the oncoming patrol vehicle. NE#1 felt that this was abnormal. He believed it possible that the Complainant was trying to initiate contact with an officer, which raised his concern. He particularly felt that the Complainant's behavior was strange as his patrol vehicle was clearly marked and his emergency lights were on at the time. He stopped to address the Complainant's



behavior. He described the Complainant as confrontational and noted the Complainant putting his hands in his pockets. Due to this, NE#1 asked the Complainant to sit down but the Complainant refused to do so.

NE#1 said that he considered whether to issue a warning, to charge by officer, or to take the Complainant into custody. He did not feel that a warning was appropriate given the circumstances. He also could not charge by officer at that time because the Complainant refused to provide his name or identification. Accordingly, he decided to take the Complainant into custody and arrested him. Once he obtained the Complainant's identification, he spoke to his Sergeant concerning charging by officer.

NE#1 told OPA that he has stopped people for jaywalking before. In those circumstances, the individuals he stopped were usually apologetic. He would then educate them instead of issuing them a citation. He stated that this was one of the few occasions that a subject immediately challenged him upon the stop occurring.

After watching the video, NE#1 again noted that the Complainant stopped in the street and looked directly at his patrol vehicle prior to moving onto the sidewalk. NE#1 also identified that, virtually immediately upon being contacted, the Complainant said to him: "oh now you decided to do your job." NE#1 felt that this was additional evidence indicating that the Complainant wanted to target police officers. In addition, NE#1 raised that the Complainant, himself, told NE#1 to effectuate the arrest. NE#1 said that he handcuffed the Complainant because he declined to provide his name, he did not want to cooperate with the investigation, because he did not want to get into a 'tussle' before backup arrived, and given that he did not feel that it was a good idea to remain at Third Avenue alone with a detainee.

When asked by OPA about his statement that the Complainant "jumped" in front of his vehicle, NE#1 maintained that this was accurate. He believed that his report was complete and truthful. He said that the only aspect that may have been incorrect was his statement in his report that he informed the Complainant that he would receive notices of infraction for pedestrian interference and the prohibited use of pedestrian crosswalks in the mail. He said that he may have only orally informed the Complainant about the pedestrian interference citation.

The Sergeant was not a direct witness to the incident; however, he did not believe that any of NE#1's actions were contrary to policy. This included NE#1's decision to arrest the Complainant and transport him to the precinct. The Sergeant reviewed and approved NE#1's report and did not see anything that he thought was inaccurate.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

The Complainant asserted that NE#1 abused his discretion by arresting him for jaywalking. The Complainant believed that it was a waste of resources given that NE#1 was responding to another call with his lights and sirens on at the time.



In assessing this allegation, OPA notes that NE#1 is correct that pedestrian interference is an arrestable offense. However, just because NE#1 could have made the arrest does not mean that he should have done so. In reviewing the BWV, OPA does not see the same threat as articulated by NE#1. This does not mean that OPA can conclusively say that it was not present, but simply that it is not evident from the video. Given this, OPA finds NE#1's entire approach to this stop to have been flawed. NE#1's perception of the threat caused him to act aggressively towards the Complainant. This in turn caused a potentially already uncooperative Complainant to be even more so, ultimately resulting in an arrest for a very minor offense. As the Complainant articulated, this very much seems like a waste of resources and a situation that could have been avoided. OPA also struggles to understand why NE#1 felt it was more important to stop and ultimately arrest someone who crossed against the light versus responding to the call he was driving to.

The above being said, even if OPA disagrees with NE#1's decision-making here, OPA cannot say that it was such an abuse of his discretion to rise to the level of a policy violation warranting a Sustained finding. OPA also finds it significant that, when asked about the disposition of this case, the Complainant suggested that NE#1 be spoken to about his actions and decisions. OPA agrees with this course of action and, accordingly, recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should review the video of this incident with him and debrief what occurred and his decision-making. Specifically, the chain of command should discuss NE#1's approach towards the Complainant, his statements to the Complainant, and his determination to arrest the Complainant. The chain of command should discuss OPA's findings with NE#1, as well as go over its own analysis of the necessity of the detention and arrest. The chain of command should provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

As discussed above, OPA concludes that NE#1 misread the threat level posed to him by the Complainant and the Complainant's behavior and, as a result, NE#1 approached the situation in a heightened state. This appears to have escalated a situation when this was not necessary. However, for the same reasons as stated above, OPA finds that the appropriate result is retraining and counseling, not discipline. Accordingly, OPA recommends that this allegation be Not Sustained and refers to the above Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #3

5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Based on a review of BWV and ICV, OPA finds an insufficient basis to conclude that NE#1 was being dishonest. First, the Complainant admittedly ran through the intersection. As such, NE#1 was not being dishonest in his characterization of the Complainant's actions at the scene or in his report. Second, contrary to the Complainant's assertion, NE#1 did inform him of why he was being detained. Third, NE#1's report was not inaccurate in a manner that would violate this policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**